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February 13, 1995

By Federal Express

Patricia Hick, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Emergency and Remedial Response Division
26 Federal Plaza, Room 13-100
New York, New York 10278

Re: Diamond Alkali Superfund Site

Dear Ms. Hick:

Thank you for your recent letter forwarding me certain additional documentation pertaining to this matter.

As you suggest in your letter, Chris-Craft has been reviewing the materials sent by EPA, along with other materials we have obtained. Chris-Craft remains very concerned about having been named a PRP relative to the above site. Based on the materials we have reviewed, we continue have several fundamental questions about the basis for EPA's apparent conclusions both that releases of the 2,3,7,8-TCDD dioxin congener occurred from the former Montrose Chemical Co. site and also that certain such releases found their way to the Passaic River.

In this letter, I will identify several of Chris-Craft's most important questions. In your prior letters to me you have encouraged Chris-Craft to participate in funding the RI/FS currently being undertaken by Maxus Energy Corp., which according to an EPA fact sheet is estimated to cost approximately \$10 million. I am confident EPA comprehends that before Chris-Craft can be in a position to consider contributing any portion of

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such costs, Chris-Craft must believe that EPA has acted fairly and impartially in naming it a PRP. To facilitate Chris-Craft's understanding, it respectfully requests that EPA review the questions set forth below. (For EPA's convenience, Chris-Craft's questions are set out in italics.) After EPA completes its review, Chris-Craft representatives and I would like to meet with you and appropriate EPA personnel to discuss this matter in detail.

1. Chris-Craft's Questions About The Alleged
Evidence Of Discharges From The Montrose Plant
Site To The Passaic River

For EPA or Maxus to contend that materials from the Montrose site are now found in the river sediments, there must have been a pathway for such contaminants from the plant site to the river. Such a pathway is undisputed from the former Diamond Alkali site because, according to EPA's reports, Diamond Alkali discharged wastes directly to the river. However, Chris-Craft has very serious questions about whether discharges from the Montrose plant ever reached the river. (As discussed below, we also seriously question whether any discharge of wastes containing 2,3,7,8-TCDD ever occurred from the Montrose site. We believe none did.)

The Montrose plant was not located along the river, but rather was separated from it by another property. With a single exception, all of the potential witnesses about this matter -- both those interviewed by EPA and Maxus on the one hand and those who provided the information forming the basis for Chris-Craft's responses to EPA's information requests on the other -- agree that there were no discharges from the Montrose plant to the river. According to these witnesses,¹ all of the drain lines from the plant discharged to the City of Newark sanitary sewer line running beneath Lister Avenue, which as you know was on the opposite side of the plant than

¹ These witnesses include Messrs. Kelsey Brown, Solomon Koved, Benjamin Rothberg and Samuel Rotrosen.

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the river. This sanitary sewer line in turn ran to the city's publicly owned treatment works, which we do not understand to be alleged to be a contributor to the river sediment contamination.

Thus, Chris-Craft questions whether EPA has considered and credited these witnesses' statements. To the extent EPA has not done so, we respectfully request that it explain why not.

Furthermore, the conclusion that all of the Montrose plant drain lines ran to the Lister Avenue sewer is corroborated by the historical site diagrams we have obtained from the current site lessee, Chemical Waste Management. Copies of these diagrams are enclosed. All of the plant sewers and drain lines depicted on these diagrams lead to Lister Avenue. No pipes or drains are shown leading from the plant to the river.

We ask that EPA express its willingness to evaluate impartially this newly presented historical evidence.

A single witness, Mr. Oscar Randell, whom Mr. Koved has described as an employee who required significant supervision, has said there were drain lines running from the Montrose plant to the river. We must question whether EPA has accepted this statement at face value, in light of the facts that (1) it is not corroborated by any independent evidence, such as the historical site diagrams, and (2) it is contrary to the statements of the other witnesses who have provided information about the matter.² Furthermore, Mr. Randell's statements are entirely illogical. There is no reason to believe that a

² Nor is there any reason to credit Mr. Randell's statements that he and other employees discharged plant wastes to the river by carrying buckets of waste from the plant across another property and then dumping them in the river. If, as Mr. Randell claims, there were drain lines connecting the plant to the river, why didn't he simply dump the buckets into the drain?

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company would install drainage pipes an extended distance across another company's property, when a sewer hookup was available immediately adjacent to the first company's property. In sum, because there is no logical basis for Mr. Randell's statements, and additionally because they are inconsistent both with the statements by all other witnesses and with the historical documentary evidence, you can appreciate that Chris-Craft views these statements with a great deal of skepticism.

For these reasons, Chris-Craft questions whether (and if so, to what extent), EPA has relied on Mr. Randell's statements in naming Chris-Craft a PRP; furthermore, if EPA in fact has relied on these statements, Chris-Craft questions why EPA has done so in light of the countervailing considerations discussed above.

2. Chris-Craft's Questions About Whether The Production Processes Employed At The Montrose Plant Generated 2,3,7,8-TCDD

Even if there were a basis to believe that wastes from the Montrose plant ever were discharged to the river, which we are extremely dubious of, we additionally question whether there is any basis to assert that 2,3,7,8-TCDD was a part of the plant's waste stream.

EPA apparently has accepted the qualified opinions expressed by Mr. Steven Huntley of ChemRisk, a consultant employed by Maxus, in his June 8, 1994 letter to Ms. Amanda Birrell, one of Maxus' attorneys. I say "qualified opinions," because even Mr. Huntley only opines that he believes "there is a strong likelihood that dioxin [we note that Mr. Huntley does not say 2,3,7,8-TCDD; query whether this omission was intentional] was formed during" Montrose's manufacturing processes. Nowhere does he opine unequivocally that 2,3,7,8-TCDD in fact was a byproduct of Montrose's manufacturing processes.

We have numerous questions about Mr. Huntley's analysis, which we believe is inconclusive in several

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important respects. Preliminarily, we must raise the obvious fact that Mr. Huntley is employed as a consultant by Maxus and hence cannot be viewed as being impartial. *Thus, among other things, we ask whether EPA has undertaken any independent analysis of Mr. Huntley's opinions.*

Mr. Huntley's letter purports to consider the possibility that "dioxins" were produced in the manufacture of 2,4-dichlorophenol (2,4-DCP), 2,4-dichlorophenoxyacetic acid (2,4-D), 2,4,5-trichlorophenol (2,4,5-TCP), 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), and tricresyl phosphate. Because, as discussed further below, Chris-Craft does not believe that 2,4,5-TCP and 2,4,5-T ever were manufactured at the plant, the following paragraphs explain why Chris-Craft is skeptical of Mr. Huntley's conclusions about "dioxin" formation associated with Montrose's manufacture of 2,4-DCP, 2,4-D and tricresyl phosphate.

2,4-DCP

We have been advised by our consultants that, in the production of 2,4-DCP from phenol and chlorine, reaction of chlorophenoxy radicals theoretically could lead to the formation of 2,7-dichlorodibenzo-p-dioxin (2,7-DCDD). Mr. Huntley notes, however, that a study by Firestone (1972) indicated that 2,4-DCP has not been found to be contaminated with dioxins. That this is the case was confirmed in a recent EPA summary of studies concerning dioxin contamination of chlorophenols, in which 2,4-DCP was analyzed for di-, tri-, tetra-, penta-, hexa-, hepta-, and octa-chlorodibenzo-p-dioxins, but none were found at a detection limit of generally 1 ppm (EPA, 1994).³ Chris-Craft is informed that despite the potential for formation of certain dioxin congeners (*i.e.*, it is chemically plausible that 2,7-DCDD may be formed),

³ EPA (Environmental Protection Agency) 1994. Estimating Exposure to Dioxin-Like Compounds; Volume II: Properties, Sources, Occurrence and Background Exposures. Exposure Assessment Group, Office of Health and Environmental Assessment, Washington, DC. EPA/600/6-88/005Cb.

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none actually have been detected in analyses of 2,4-DCP formulations. In addition, Chris-Craft is informed that although it may be theoretically possible to form certain dioxin congeners from any chlorinated phenol, the dioxins that would be formed from 2,4-DCP do not include 2,3,7,8-TCDD and are not environmentally important. We understand that the Toxic Equivalency Factors for mono-, di- and tri-chlorinated dibenzodioxins -- the dioxin congeners which conceivably might result from 2,4-DCP production -- is zero, which means they would not be considered to be "toxic" dioxin congeners.

Thus, Chris-Craft questions whether (and if so, to what extent), EPA has construed Mr. Huntley's statements about dioxin formation during the production of 2,4-DCP as providing a basis to conclude that 2,3,7,8-TCDD was part of Montarose's waste stream. If so, Chris-Craft questions whether EPA is prepared to reconsider its having done so, in light of the information discussed above.

2,4-D

The EPA has described a possible reaction sequence by which 2,7-DCDD is formed when 2,4-DCP and chloroacetic acid are used in the production of 2,4-D (Esposito et al., 1980).⁴ However, 2,3,7,8-TCDD never has been detected with analytical methods sensitive to 1 part per billion (ppb). Just as importantly, as noted above, the only dioxins that theoretically could be formed from 2,4-DCP are not 2,3,7,8-TCDD.

Thus, Chris-Craft questions whether (and if so, to what extent), EPA has construed Mr. Huntley's statements about dioxin formation during the production of

⁴ Esposito, M.P., T.O. Tiernan, and F.E. Dryden. 1980. Dioxins. Industrial Environmental Research Laboratory, Office of Research and Development, United States Environmental Protection Agency, Cincinnati, OH. EPA-600/2-80-197.

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2,4-D as providing a basis to conclude that 2,3,7,8-TCDD was part of Montrose's waste stream. If so, Chris-Craft questions whether EPA is prepared to reconsider its having done so, in light of the information discussed above.

Tricresyl Phosphate

Mr. Huntley is of the opinion that the conditions used by Montrose in the manufacture of tricresyl phosphate -- i.e., presence of a chlorinating agent (phosphorus oxychloride), proper temperature, a metal catalyst, and a substituted phenolic precursor (cresol) - provided a "strong potential" to generate dioxins. We understand that according to Esposito et al. (1980), supra, the potential exists for the generation of substituted dioxins by the direct conversion of substituted phenols (such as cresol) in the presence of a palladium-copper catalyst; however, for this reaction, if the substituted phenol is cresol (o-, m-, or p-methylphenol), the resulting dioxin is a methyl-substituted dioxin, and not a chlorinated dioxin. Thus, we are informed that although production of certain dioxin congeners is theoretically possible in the manufacture of tricresyl phosphate, the dioxin congener formed is a completely different compound than 2,3,7,8-TCDD. In addition, an extensive literature search by our consultants failed to identify any study which describes the production of dioxins in the manufacture of tricresyl phosphate.

For these reasons, Chris-Craft questions whether (and if so, to what extent), EPA has credited Mr. Huntley's statements about dioxin formation during the production of tricresyl phosphate. If so, Chris-Craft questions whether EPA is prepared to reconsider its having done so, in light of the information discussed above.

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3. Chris-Craft Does Not Believe That 2,4,5-TCP Or
2,4,5-T Ever Were Manufactured At The Montrose
Plant

Mr. Koved stated during his "deposition"⁵ that Montrose manufactured 2,4,5-T, and its precursor 2,4,5-TCP, for approximately 6 months in about 1950. We must note, as Mr. Koved has conceded, that he is a consultant for Maxus and that his testimony must be viewed as potentially partial to Maxus. The witnesses with whom Chris-Craft consulted in connection with preparing its responses to EPA's information requests, Messrs. Rotrosen and Rothberg, have stated that these substances were not manufactured at the plant. In the interest of resolving the disagreement between these witnesses' statements, we have evaluated independent historical evidence that could shed light on whether Montrose manufactured 2,4,5-T.

The evidence we have obtained supports our belief that Montrose did not manufacture 2,4,5-T. First, we have obtained advertisements published on behalf of Montrose in the Oil, Paint & Drug Reporter by Montrose's exclusive sales agent, R.W. Greeff & Co., from 1949-1951 (copies are enclosed). Although these advertisements -- consistent with the statements of Messrs. Koved, Rotrosen, and Rothberg -- reflect Montrose having manufactured and advertised 2,4-D and DDT, they do not indicate that Montrose ever manufactured 2,4,5-T. This evidence supports Chris-Craft's belief that Montrose did not manufacture 2,4,5-T. Second, we have obtained annual reports produced by the United States Tariff Commission describing domestic production and sales of synthetic

⁵ Chris-Craft is puzzled that EPA elected to "depose" Mr. Koved, presumably for the purposes of obtaining evidence to support naming Chris-Craft as a PRP, and afforded Maxus the opportunity to attend the deposition but did not extend the same opportunity to Chris-Craft. From Chris-Craft's perspective, EPA's doing so is suggestive of favoritism towards Maxus. Thus, we ask that EPA explain why Maxus was afforded the opportunity to attend the Koved deposition but Chris-Craft was not.

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organic chemicals. These reports were created based on information submitted by chemical manufacturers to the Tariff Commission. The annual reports for 1949, 1950 and 1951, copies of which are enclosed, show that Montrose submitted information stating that it manufactured 2,4-D, but never manufactured 2,4,5-T. See 1949 report at 127; 1950 report at 129; and 1951 report at 135.

Accordingly, Chris-Craft questions whether (and if so, to what extent), EPA has credited Mr. Koved's statements about 2,4,5-T manufacture at the Montrose plant. If EPA has done so, Chris-Craft questions whether EPA is prepared to reconsider its view, in light of the evidence collected by Chris-Craft.

CONCLUSION

We are confident EPA will agree that Chris-Craft's questions merit the agency's substantive attention and we are hopeful that you will give them the detailed consideration they deserve. Additionally, to the extent any of the bases for EPA's having named Chris-Craft a PRP are not discussed above, we respectfully request that the agency identify them.

Finally, Chris-Craft's reiterates that it would like to meet with you and other EPA personnel to discuss the matters addressed above.

Very truly yours,



Peter Simshauser

Enc.

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